

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-094

November 24, 1998

PUBLIC UTILITIES COMMISSION
Investigation into the Assessment
of PIC Change Charges by Local
Exchange Carriers

ORDER

I. Summary

In this Order, the Commission closes its investigation into the assessment of Presubscribed Interexchange Carrier (PIC) Change Charges by local exchange carriers. The Commission accepts the parties' commitment to refund the "service order" fees that were collected.

II. Background

This Commission has jurisdiction over the intrastate activities of interLATA interexchange carriers as well as jurisdiction over the intrastate activities of Maine's local exchange carriers. This Commission does not have jurisdiction over interstate telecommunications activities, such activities are regulated by the Federal Communications Commission (FCC).

Since the early 1990s, customers of local exchange carriers have been able to presubscribe to an interstate, interLATA interexchange carrier of their choice. In an order dated April 27, 1984, the FCC established a \$5 rate for making a PIC change; local exchange carriers could charge their customers \$5 for changing the customer's PIC (after one free initial change).¹ The FCC's decision was based upon information and data supplied by the National Exchange Carriers Association (NECA) as well as policy considerations concerning the development of competition in the long distance market. Specifically, the FCC found that, *absent proper cost support*, the \$5 rate "reflected some cost recovery and would not pose a barrier to competitive entry or exercise of customer choice." *Id.* Carriers were free to later file properly supported unbundled charges for PIC changes and request a higher rate. No Maine local exchange carrier has informed the Commission that they made such a filing.

¹ Memorandum Opinion and Order, Investigation of Access and Divestiture Related Tariffs, FCC (CC Docket No. 83-1145) (April 27, 1984).

In July of 1997, the Commission received several complaints from customers of Pine Tree Telephone Company and China Telephone Company regarding the fees that the companies were assessing to effect an interstate PIC change. Informal discovery took place and the Commission learned that these companies were charging PIC change service fees in excess of the \$5 NECA tariff. The service fees were purportedly based on each company's intrastate tariff on file with the Commission. Specifically, the carriers argued that the \$5 NECA tariff limit did not prohibit them from assessing a fee for the same activity based upon an intrastate tariff. Each of the company's tariffs contained general provisions regarding service fees. There was no mention of any specific fee associated with the interstate PIC changes.

On February 19, 1998, the Commission initiated this investigation to determine whether other local exchange carriers were assessing PIC change fees in excess of the NECA tariff rate and, if so, the amount of excessive PIC change fees collected. In its Order initiating this Investigation, the Commission made all LECs parties to the proceeding and required them to respond to five questions concerning the assessment of PIC change fees. A review of the responses filed by the LECs indicated that only five LECs had assessed PIC change fees in excess of the \$5.00 NECA-tariffed fee.

Accordingly, on May 15, 1998, the Hearing Examiner issued a Procedural Order requesting that the five LECS (Pine Tree Telephone and Telegraph Company, China Telephone Company, Standish Telephone Company, Community Service Telephone Company, and Union River Telephone Company) (referred to hereafter as "the parties") state whether they were willing to refund the fees collected in excess of the NECA tariff and, if not, to provide legal argument in support of their position.

III. POSITIONS OF THE PARTIES

Collectively, the parties maintain that their practice of assessing a "service" fee in addition to the NECA tariff rate complies with both federal and state law. However, each party has also indicated that it is willing to refund the excess fees collected.

A. Pine Tree Telephone Company

In its response to the Commission's Order, Pine Tree Telephone Company (Pine Tree) indicated that it had assessed a \$10 PIC-related service charge 2,334 times. In its response to the Procedural Order, Pine Tree stated that it was willing to refund the excess service order fees (\$23,340) but that it would

be difficult and time consuming to identify each individual occurrence of a service order. Accordingly, Pine Tree volunteered to provide an across the board refund to all of its customers and stated it could accomplish such a refund within two weeks of a Commission order.

B. Community Service Telephone Company

In its response to the Commission's Order, Community Service Telephone Company (CommTel) indicated that it had charged a \$3.00 service order fee for effectuating a PIC change on 8,641 occasions. In its response to the Procedural Order, CommTel stated that it would be willing to refund all of the excess fees (\$25,923) but that identifying specific customers who were charged the fee would be time and labor intensive. Accordingly, CommTel volunteered to provide an across the board refund to all customers who had completed at least one PIC change. Customers who had not made a PIC change would not receive any part of the refund.

C. Union River Telephone Company

In its response to the Commission's Order, Union River Telephone Company (Union River) indicated that it had assessed a \$7.50 service charge for PIC changes on 490 occasions. In its response to the Procedural Order, Union River indicated that it was willing to refund all excess fees and that it would be able to identify the specific customers who had been charged the excess PIC fee.

D. Utilities, Inc. Companies

In their response to the Commission's Order, the Utilities, Inc. companies (China Telephone Company (China), Maine Telephone Company (Maine) and Standish Telephone Company (Standish)) indicated that they had assessed a \$5.00 PIC service order fee as follows: Standish -- 3,463 times; Maine -- 5,399 times; and China -- 1,997 times. The companies further indicated that because they switched to a computerized billing system in December of 1994, they were unable to determine how many PIC changes occurred prior to that date.

In their response to the Procedural Order, the Utilities, Inc. companies indicated that they would only be willing to refund the fees if ordered by the Commission. Counsel for Utilities, Inc. has since informed the Hearing Examiner that the companies are willing to provide an across the board refund of the excess fees, based upon the number of changes made since implementation of the computerized system in December of 1994.

Accordingly, Standish would refund \$17,315, Maine would refund \$26,995, and China would refund \$9,985.

IV. DECISION

The Commission accepts the parties' offers to refund the service fees collected to their customers. In order to assure uniformity and fairness, the Commission directs the parties to refund the fees directly to specific customers where it is possible (without undue delay or expense) to identify the specific change made by a specific customer on a specific date and to provide across the board refunds to all customers with any remaining funds. The parties should begin the process necessary to implement the refund as soon as possible and complete the refunds by December 31, 1998. Any party unable to meet this deadline should provide the Commission with a written explanation for the delay and an alternative deadline.

Dated at Augusta, Maine this 24th day of November, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: WELCH
NUGENT
DIAMOND